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Attorneys for Defendants  
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Judson W. Bibb III, Theodore H. Banzhaf,  
Mark M. Hodowanec, and Nominal Defendant  
HPEV, Inc.

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

PEAK FINANCE, LLC, Derivatively on behalf  
of Nominal Defendant, HPEV, INC.,

Plaintiff,

vs.

TIMOTHY J. HASSETT, QUENTIN D.  
PONDER, JUDSON W. BIBB III,  
THEODORE H. BANZHAF, AND MARK M.  
HODOWANEC,

Defendants.

and

HPEV, INC.

Nominal Defendant.

CASE NO. 2:15-cv-01590-GMN-CWH

**STIPULATION AND [PROPOSED] ORDER  
FOR STAY OF PROCEEDINGS**

COMES NOW Plaintiff PEAK FINANCE, LLC, Derivatively on behalf of Nominal Defendant, HPEV, INC., by and through its counsel of record Stuart J. Guber of the law firm FARUQI & FARUQI, LLP and Defendants HPEV, TIMOTHY J. HASSETT, QUENTIN D. PONDER, JUDSON W. BIBB III, THEODORE H. BANZHAF, AND MARK M. HODOWANEC by and through their counsel of record Mark S. Dzarnoski of the law firm GORDON SILVER and hereby stipulate and agree as follows:

1. This matter be stayed in all respects pending the Court's decision on Defendants' Motion to Dismiss [Dkt. 40]; and,

2. This matter be stayed in all respects, except for the Court's decision on Defendants' Motion to Dismiss [Dkt. 40], pending the decision of the United States District Court, District of Nevada in the related case styled HPEV, INC vs. SPIRIT BEAR LIMITED, a Delaware corporation, and associated Counter and Third Party Claims, CASE NO. 2:13-cv-01548-JAD-GWF (the "SBL Derivative Action") regarding giving final approval to the Derivative Action Settlement Agreement before the district court following hearing thereon on November 20, 2015.

In support thereof, the parties set forth the following:

1. Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), "all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss." 15 U.S.C. § 78u-4(a)(9)(B) (1995).

2. Within the Ninth Circuit, precedent confirms that that the stay provided under the PSLRA covers derivative actions. See *In re Countrywide Financial Corp. Derivative Action*, 542 F. Supp.2d 1160 (USDC, CD California, 2008). ("While no circuit court has addressed this issue, district courts have frequently applied the PSLRA to stay discovery in shareholder derivative actions that allege violations of federal law. See *In re Altera Corp. Deriv. Litig.*, No. C 06-03447 JW, 2006 WL 2917578 (N.D.Cal. Oct. 11, 2006) (finding a stay in derivative action consistent with the purposes underlying SLUSA) (citing *Erickson v. Horing*, 2000 WL 35500986, at \*5-\*7, 2000 U.S. Dist. LEXIS 22432, at \*19-\*23 (D.Minn. Oct. 23, 2000)); *In re Trump Hotel Shareholder Deriv. Litig.*, No. 96CIV.7820, 1997 WL 442135, at \*2 (S.D.N.Y. Aug. 5, 1997) (noting that the plain language of the stay \*1180 provision is not limited to class actions); *Melzer v. CNET Networks, Inc.*, No. C 06-03817 WHA, 2006 WL 3716477, at \*2 (N.D.Cal. Dec. 15, 2006) (citing numerous district courts reaching same conclusion)"))

3. Defendants herein have filed a Motion to Dismiss contending that the Amended Derivative Complaint on file herein should be dismissed for, among other reasons, failure to satisfy the pleading requirements of the PSLRA. [See Dkt. 40 and 44].

4. Plaintiff has opposed Defendants' Motion to Dismiss. [See Dkt 43].

///

1           5.       While the parties disagree as to the merits of the Motion to Dismiss, both parties  
2 stipulate and agree that the matter ought to be stayed pursuant to the stay provisions of the  
3 PSLRA pending the decision of the Court on the Motion to Dismiss.

4           6.       Additionally, the SBL Derivative Action has been identified as a “Related Case”  
5 to the instant matter. [See Dkt. 5].

6           7.       In the SBL Derivative Action, the district court held a final fairness hearing on  
7 November 20, 2015 to determine whether to give its final approval to the Derivative Action  
8 Settlement Agreement (the “DASA”) entered into between counter-defendants and derivative  
9 counter-claimant therein. Following the hearing, the district court ordered the submission of  
10 supplemental briefs on various matters. Supplemental briefing is currently scheduled to be  
11 completed on February 8, 2016.

12           8.       Counsel for the parties believe that this litigation may be substantially impacted  
13 by the district court’s decision on whether to approve the DASA in the SBL Derivative Action.

14           9.       In addition to staying the instant action while the Court considers the Motion to  
15 Dismiss, the parties stipulate and agree that it is in the interest of justice and judicial economy to  
16 stay the instant matter until the district court has rendered a decision to approve or disapprove the  
17 DASA in the SBL Derivative Action.

18           10.      This Court has the inherent power to stay an action pending resolution of a related  
19 proceeding. *See Venice Genoa Tile, LLC v. Panariagroup Industrie Ceramiche S.p.A.*, No. CIV.  
20 08-482-HU, 2008 WL 4793252, at \*6 (D. Or. Oct. 29, 2008) (citing *Landis v. North Am. Co.*,  
21 299 U.S. 248, 254 (1936)). Such authority is clear in the Ninth Circuit. *Levy v. Certified*  
22 *Grocers of Cal. Ltd.*, 593 F. 2d 857, 863-64 (9th Cir. 1979) (stay permitted when “efficient for  
23 [court’s] own docket and the fairest course for the parties . . . pending resolution of independent  
24 proceedings [whether or not] such proceedings are necessarily controlling of the action before  
25 the court”).

26           The parties jointly certify that this Stipulation and [Proposed] Order is submitted for good  
27 cause and not for the purpose of unnecessarily delaying these proceedings. None of the parties  
28 will be prejudiced by the requested stay.

1 IT IS SO STIPULATED.

2 DATED this 4th day of January, 2016.

DATED this 4th day of January, 2016.

3 GORDON SILVER

FARUQI & FARUQI, LLP

4 /s/ Mark S. Dzarnoski

/s/ Stuart J. Guber

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*Mark M. Hodowanec, and Nominal*  
9 *Defendant*  
10 *HPEV, Inc.*

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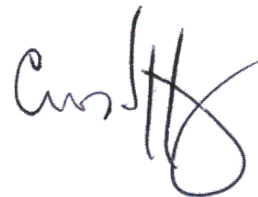
11 **[PROPOSED] ORDER**

12 Based upon the stipulation of counsel and good cause appearing, it is hereby Ordered as  
13 follows:

14 1. This matter be stayed in all respects pending the Court's decision on Defendants'  
15 Motion to Dismiss [Dkt. 40]; and,

16 2. This matter be stayed in all respects, except for the Court's decision on  
17 Defendants' Motion to Dismiss [Dkt. 40] pending the decision of the United States District  
18 Court, District of Nevada in the related case styled HPEV, INC vs. SPIRIT BEAR LIMITED, a  
19 Delaware corporation, and associated Counter and Third Party Claims, CASE NO. 2:13-cv-  
20 01548-JAD-GWF (the "SBL Derivative Action") regarding giving final approval to the  
21 Derivative Action Settlement Agreement currently before the district court following hearing  
22 thereon on November 20, 2015.

23 **IT IS SO ORDERED.**



24  
25 UNITED STATES MAGISTRATE JUDGE

26 Dated: January 5, 2016